

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE SERVICES
Before the Commissioner of Financial and Insurance Services

In the matter of

XXXXX

Petitioner

File No. 85525-001

v

John Alden Life Insurance Company
Respondent

Issued and entered
this 17th day of December 2007
by Ken Ross
Acting Commissioner

ORDER
I
PROCEDURAL BACKGROUND

On October 2, 2007, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Services under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.* On October 8, 2007, after a preliminary review of the material submitted, the Commissioner accepted the request.

Initially this case appeared to involve only contractual issues so the Commissioner did not assign it to an independent review organization (IRO) for review by a medical professional. After further evaluation, the Commissioner determined this case would benefit from review by an outside expert and assigned it to an IRO. On November 12, 2007, the IRO completed its review and sent its recommendation to the Office of Financial and Insurance Services.

II
FACTUAL BACKGROUND

The Petitioner is covered under a small group policy underwritten by John Alden Life Insurance Company (John Alden). The Petitioner had an esophagogastroduodenoscopy (EGD)

and colonoscopy at XXXXX in XXXXX, on April 4, 2007. The procedures were performed under monitored anesthesia care by an anesthetist. John Alden approved coverage for the endoscopy and colonoscopy but denied coverage for the separate anesthesia services.

The Petitioner appealed and completed John Alden's internal grievance process. John Alden maintained its denial and issued a final adverse determination letter dated September 18, 2007.

III ISSUE

Was John Alden correct in denying coverage for the monitored anesthesia care provided during the Petitioner's endoscopy and colonoscopy on April 4, 2007?

IV ANALYSIS

Petitioner's Argument

The Petitioner thinks it is improper for John Alden to deny coverage for the anesthesia service since her physician, XXXXX, MD, says that an IV general anesthesia is medically necessary for both the colonoscopy and the EGD with a biopsy. The Petitioner therefore believes John Alden should provide coverage.

Respondent's Argument

In its final adverse determination, John Alden defended its decision to deny coverage for the anesthesia in this way:

The medical appropriateness of the endoscopy services is not at issue....The separate anesthesia services on 4/04/2007 were not medically necessary. Sedation and analgesia are medically appropriate for endoscopic procedures. The medical record does not document a significant comorbid condition or significant airway condition that would require the use of deep anesthesia and the services of an anesthesiologist or nurse anesthetist. * * * Reimbursement for conscious sedation is also included within the codes covering endoscopic procedures.

John Alden asserts that its denial of the separate anesthesia charge was appropriate.

Commissioner's Review

In determining whether John Alden's denial should be upheld or reversed, the Commissioner looks first to the terms of the Petitioner's policy. The policy covers only those medical procedures, services, and supplies which are medically necessary. The policy has this definition:

Medically Necessary/Medical Necessity

A service or supply that We determine, at Our discretion, to be:

1. necessary for the symptoms and diagnosis or treatment of the Illness or Injury;
2. provided for the diagnosis, or the direct care and treatment, of the Illness or Injury;
3. in accordance with generally accepted medical practice;
4. not in excess of that level of care that is needed to provide safe, adequate and appropriate diagnosis or medical treatment;
5. not for convenience purposes. . . ;
6. the most appropriate level of medical care the Insured Person needs;
7. furnished within the framework of generally accepted methods of medical management currently used in the United States;
8. not Experimental or Investigational. . . ; and
9. not for Maintenance Care. . . .

The fact that a Physician prescribes, orders, recommends or approves the care, the level of care or the length of time care is to be received, does not make the services Medically Necessary.

Since this appeal involves a question of medical necessity, the Commissioner obtained an analysis and recommendation from an IRO as required by Section 11(6) of PRIRA, MCL 550.1911(6). The IRO reviewer for this case is a physician in active practice who is certified by the American Board of Internal Medicine with a subspecialty in gastroenterology; a fellow of the American College of Gastroenterology; and currently an internal medicine consultant for the gastroenterology departments at several Midwest hospitals. The IRO reviewer recommended that John Alden's denial of coverage for anesthesia services beyond conscious sedation be upheld.

The IRO report notes that the anesthesia the Petitioner received was Propofol. The Petitioner's American Society of Anesthesiologists status listed on the anesthesia monitoring sheet

was Physical Status 2. The IRO reviewer said no other information was available “that would document that [the Petitioner] was either high risk or that the procedure was complex.” According to the IRO reviewer, Physical Status 2 is an indication of an average risk patient. The IRO reviewer also said that a screening colonoscopy and an EGD with biopsy are standard procedures, not complex ones; the usual anesthesia provided for these procedures is conscious sedation. Standard conscious sedation was recommended for this type of patient in the peer-reviewed medical literature on sedation for endoscopy.

The Commissioner is not required in all instances to accept the IRO’s recommendation. However, the IRO recommendation is afforded deference by the Commissioner. The IRO analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why the recommendation should be rejected in this case. The Commissioner accepts the conclusion of the IRO that the anesthesia services in question were not medically necessary, and finds those services were therefore not a covered benefit under the Petitioner’s policy.

V ORDER

The Commissioner upholds John Alden Insurance Company’s September 18, 2007, adverse determination. John Alden is not responsible for coverage of the monitored anesthesia care provided on April 4, 2007.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the Circuit Court for the county where the covered person resides or in the Circuit Court of Ingham County.

A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Services, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.